

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE HONORABLE BOARD OF PATENT APPEALS**

In re the application of:	)	
	)	Group Art Unit: 3623
Ben Baldwin et al.	)	
	)	Examiner: ROMAIN JEANTY
Application No: 09/386,641	)	
	)	Attorney Docket: SAB-017
Filed: August 31, 1999	)	
	)	
For: JOB MATCHING	)	
SYSTEM AND METHOD	)	

**APPELLANT'S BRIEF UNDER 37 C.F.R. 41.37**

The Assistant Commissioner of Patents  
Washington, D.C. 20231  
U.S.A.

Dear Sir or Madam:

The following is the Appeal Brief submitted under the provisions of 37 C.F.R. 41.37. The fee of \$250.00 required by 37 C.F.R. 41.20(b)(2) has been previously submitted.

**Real Party in Interest**

The real party in interest is the assignee of record, i.e. CAREERXACT INC., 20 Eglinton Avenue East, Suite 401, Toronto, Ontario, M4P 1A9, CANADA.

**Related Appeals and Interferences**

There are no related appeals or interferences that will directly affect, be directly affected by or have a bearing on the present appeal.

### **Status of Claims**

The present appeal is directed to claims 1-27, all of the pending claims in this application. All have been rejected.

### **Status of Amendments**

Claims 1, 22, 25 and 26 have been amended by way of amendment after final action filed May 16, 2005. No other amendments have been filed after a final rejection.

### **Summary of Claimed Subject Matter**

The invention relates to a job matching system and method that compares a candidate's personality profile to employment position data provided by potential employers to determine a list of available employment positions that is disclosed to the candidate. By identifying to the individual candidate only those employment positions for which the personality profile for suitable candidates matches the individual candidate's personality profile, this job matching system quickly identifies suitable employment positions and provides an increased likelihood that matched job candidates are suitable for a particular job.

Advantageously, then, candidates may choose from among job positions for which their personality profile is suited and they may communicate their suitability to actual potential employers at an early state of the application process. In turn, employers may save time and expense in the hiring process by only assessing potential candidates with suitable personality profiles. Employers may also take comfort that a matched candidate has a personality profile suitable for a specific employment position.

The invention is particularly well-suited for implementation in a computer-networked environment, such as the Internet. When fully automated, the speed and convenience of the present method is further enhanced.

Exemplary of the present invention, measures of personality traits (**36**; page 8, lines 9 to 12) are used to match candidates to employment positions (page 5, line 31 to page 6, line 1). Candidates' traits may be assessed by administering a questionnaire (page 13, lines 20 to 24). A similar questionnaire may be provided to suitable employees who are already filling, or have previously filled, available employment positions, in order to assess personality traits of suitable employees for each position (page 8, lines 28 to 34). Results are preferably received and compared (page 14, lines 29 to 32). A list of suitable jobs with different employers may then be provided to the candidate (page 16, lines 20 to 24).

In accordance with one aspect of the invention, as claimed in independent claim 1, (as amended for appeal) there is provided a computer implemented method of matching an employment candidate to specific employment positions from multiple employers (page 5, line 31 to page 6, line 1), comprising:

- a. for each of a plurality of available employment positions, receiving employment position data (**FIG. 2 - 30**) measuring a plurality of defined personality traits for suitable candidates for that employment position (**S402**, page 8, lines 17-21);
- b. storing said received employment position data (**FIG. 4 - S404**, page 12, lines 6 to 11)
- c. receiving individual candidate data, representative of a personality profile for said employment candidate (**FIG. 6 - step S602**, page 14, lines 20 to 27);
- d. comparing said individual candidate data with said employment position data to produce a list of potential employment positions for said candidate, from said employment positions (**FIG. 6 - steps S606-**

**S612**, page 14, lines 29 to 32), said list identifying those of said employment positions for which defined personality traits, as reflected by said employment position data, match said individual candidate data;

- e. providing said list to said candidate (**FIG. 6** - step **S614**, page 16, lines 20 to 24).

In accordance with another aspect of the present invention, as claimed in independent claim 18 (as amended) there is provided a computer readable medium, storing computer software that when loaded into a computing device, adapts said computing device to: for each of a plurality of available employment positions, receive employment position data measuring a plurality of defined personality traits (**36**; page 8, lines 9 to 12) for suitable candidates for each of a plurality of employment positions from a plurality of employers (**FIG. 4 -S402, page 8, lines 17-21**); store said received employment position data at said computing device (**FIG. 4 - S404**, page 12, lines 6 to 11); receive individual candidate data, representative of a personality profile for said candidate (**FIG. 6** - step **S606**, page 14, lines 21 to 27); compare said individual candidate data with said employment position data to produce a list of potential employment positions for said individual candidate from said employment positions, said list identifying those of said employment positions for which defined personality traits (**36**; page 8, lines 9 to 12), as reflected by said employment position data, match said individual candidate data (**FIG. 6** - steps **S606-S612**, page 14, lines 29 to 32); provide said list to said individual candidate (**FIG. 6** - step **S614**, page 16, lines 20 to 24).

In accordance with another aspect of the present invention, as claimed in independent claim 19, there is provided a computing device for interconnection with a computer network (**FIG. 1, 14**), said computing device comprising: a processor; computer memory in communication with said processor; said computer memory storing processor readable instructions adapting said

computing device to: for each of a plurality of available employment positions, receive employment position data (**FIG. 2 - 30**) measuring a plurality of defined personality traits (**FIG. 3 -36**; page 8, lines 9 to 12) for suitable candidates for each of a plurality of employment positions from a plurality of employers (**FIG. 4 - S402**, page 8, lines 17-21); store said received employment position data at said computing device (**FIG. 4 - S404**, page 12, lines 6 to 11); receive individual candidate data, representative of a personality profile for said candidate (**FIG. 6 - step S606**, page 14, lines 21 to 27); compare said individual candidate data with said employment position data to produce a list of potential employment positions for said individual candidate from said employment positions, said list identifying those of said employment positions for which defined personality traits, as reflected by said employment position data, match said individual candidate data (**FIG. 6 - steps S606-S612**, page 14, lines 29 to 32); provide said list to said individual candidate (**FIG. 6 - step S614**, page 16, lines 20 to 24).

In accordance with yet another aspect of the present invention, as claimed in independent claim 20, there is provided a computer implemented method of matching employment seekers to available employment openings of a plurality of employers using a computing device, comprising: for each of said employment openings storing aggregate personality profiles, reflective of desired personality traits (**36**; page 8, lines 9 to 12) for that employment opening (**FIG. 4 - S404**, page 12, lines 6 to 11); for each of said employment openings storing identifying information (**FIG. 2**, 28a-28e, page 8, line 17 – page 9, line 4) for that employment opening; administering a questionnaire (page 13, lines 20 to 24) to an employment seeker (**FIG. 5 – S508-S510**); assessing a personality profile of said employment seeker based on said questionnaire (**FIG. 6 - step S602**, page 14, lines 20 to 27); comparing said personality profile of said employment seeker to said stored aggregate personality profiles, to determine ones of said employment openings suiting said personality profile of said employment seeker (**FIG. 6 - steps S606-S612**, page 14, lines 29 to 32); identifying to said employment seeker, a list of said identifying information of said employment

openings suiting said personality profile of said employment seeker based on said comparing (**FIG. 6** - step **S614**, page 16, line 20 to page 17, line 7).

In accordance with another aspect of the present invention, as claimed in claim 25 (as amended), there is provided a computer implemented method of filtering access to a database (**FIG. 1** – 24, page 5, line 29- page 6, line 26) of available employment opportunities, accessible by way of a data network, said method comprising: for each of said employment opportunities, storing an aggregate personality profile, reflective of desired personality traits (**36**; page 8, lines 9 to 12) for that employment opportunity, and associated information about that employment opportunity (**S402**, page 8, lines 17-21); providing a questionnaire (page 13, lines 20 to 24) to an employment seeker; receiving responses to said questionnaire (page 13, lines 28 to page 14, line 2) (**FIG. 5** – **S508-S510**); assessing a personality profile of said employment seeker based on said responses (**FIG. 6** - step **S602**, page 14, lines 20 to 27); comparing said personality profile of said employment seeker to said stored aggregate personality profiles, to determine ones of said employment opportunities stored in said database suiting said personality of said employment seeker (**FIG. 6** - step **S614**, page 16, line 20 to page 17, line 7); identifying to said employment seeker a list of said employment opportunities suiting said personality profile of said employment seeker (page 16, line 20 – page 17, line 9), and said associated information of said employment opportunities suiting said personality profile of said employment seeker, based on said comparing.

In accordance with another aspect of the invention, as claimed in independent claim 26 (as amended), there is provided a computer implemented method of operating an on-line database service matching employment opportunities of various employers to employment seekers, said method comprising:

for each of said employment opportunities, receiving from one of said various employers, an aggregate personality profile, reflective of desired personality traits for that employment opportunity, and associated information about that employment opportunity (**FIG. 4 - S404**, page 12, lines 6 to 11);

storing said aggregate personality profile (**FIG. 4 - S404**, page 12, lines 6 to 11);

providing a questionnaire to an employment seeker (**FIG. 5 – S508-S510**; page 13, lines 20 to 24);

receiving responses to said questionnaire (**FIG. 5, S508 –** page 13, lines 29-32);

assessing a personality profile of said employment seeker based on said responses (**FIG. 6 - step S602**, page 14, lines 20 to 27);

comparing said personality profile of said employment seeker to said stored aggregate personality profiles, to determine ones of said employment openings suiting said personality profile of said employment seeker (**FIG. 6 - steps S606-S612**, page 14, lines 29 to 32);

identifying to said employment seeker, a list of said employment opportunities suiting said personality profile of said employment seeker, and said associated information of said employment opportunities suiting said personality profile of said employment seeker, based on said comparing (**FIG. 6 - step S614**, page 16, line 20 to page 17, line 7).

### **Issues to be reviewed on Appeal**

The issues at appeal are whether the Examiner erred in:

A. rejecting independent claims 1, 22, 25, and 26 under 35 U.S.C. 101 as being directed to non-statutory subject matter

B. rejecting dependent claims 3-17, 21, 23, and 24 under 35 U.S.C. 101 as being directed to non-statutory subject matter

C. rejecting independent claims 1, 18, and 19 under 35 U.S.C. 103(a) in view of US Patent No. 5,978,768 to McGovern et al. (hereinafter "McGovern") and "Employees selection makes Ritz tradition" (hereinafter "Wagner").

D. rejecting dependent claims 3-5, 16, 17, and 20 under 35 U.S.C. 103(a) in view of McGovern and Wagner.

E. rejecting independent claims 22, 25, and 26 under 35 U.S.C. 103(a) in view of US Patent No. 6,385,620 to Kurzius et al. (hereinafter "Kurzius"), Wagner, and Jane.

F. rejecting dependent claims 23, 24, and 27 under 35 U.S.C. 103(a) in view of Kurzius, Wagner, and Jane.

G. rejecting dependent claims 6-9 under 35 U.S.C. 103(a) in view of McGovern, Wagner and US Patent No. 6,289,340 to Puram et al. (hereinafter "Puram").

H. rejecting dependent claims 10-12 under 35 U.S.C. 103(a) in view of McGovern, Wagner, Puram, and US Patent No. 6,275,012 to Haq et al. (hereinafter "Haq").

I. rejecting dependent claims 13-15 under 35 U.S.C. 103(a) in view of McGovern, Wagner, and US Patent No. 6,571,334 to Feldbau et al. (hereinafter "Feldbau").

J. rejecting dependent claim 21 under 35 U.S.C. 103(a) in view of McGovern, Wagner, and Jane.



## **Argument**

### **A. Rejection of independent claims 1, 22, 25, and 26 under 35 U.S.C. 101 as being directed to non-statutory subject matter**

#### **1. Independent Claims 1, 22 and 26**

On page 5 of Office Action mailed August 30, 2004 (hereinafter "Final Office Action"), the Examiner states that:

"In the present application, method claims 1, 18, 22, recite a 'useful, concrete and tangible result' (providing said list to said candidate), however the claims recites no structural limitations (i.e., computer implementation). None of the steps in the body of the claims indicates any connection to the computer technology/computing device. The step of 'receiving... storing... comparing..., and providing' could be performed manually by a person without use of technology means."

The Applicant believes that the first sentence of the above quoted paragraph contains an error and that the Examiner intended to refer to "...method claims 1, 22, 26..." instead of "...method claims 1, 18, 22..." in light of the Examiner's statement on page 2 of the Final Office Action:

"Claims 1, 3-17, 21-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter."

In any event, the applicant respectfully disagrees with the Examiner's rejection of independent method claims 1, 18, 22 under 35 U.S.C. 101. Specifically, the preamble of these claims clearly recites where at least some, if not all of the recited method steps are to perform. Simply ignoring the language of the

preamble when assessing statutory subject matter pursuant to 35 U.S.C. 101 is contrary to the guidance provided by MPEP (see 2111.02) and decisions of Court of Appeal - 1.76 Federal Circuit, (e.g. Catalina Mktg. Int'l v. Coolsavings.com Inc., 289 F. 3d 801, 808, 62 USP2d 1781, 1785 (Fed. Cir. 2002)).

The Board's attention is further drawn to the U.S.P.T.O.'s own guidelines on computer-related inventions, (see Examination Guidelines for Computer-Related Inventions, Final Version, 1996 - Appendix A2) asserting that computer-related processes that manipulate data representing physical objects or activities to achieve a practical application, consist of statutory subject matter. Here the claimed methods are without a doubt computer implemented and manipulate data representing physical objects/activities. Therefore, withdrawal of the rejection under 35 U.S.C. 101 of these claims is requested.

Nevertheless, for further clarity, pending independent claims 1, 22 and 26 have been amended to be limited to a "computer-implemented method".

## 2. Independent Claim 25

On page 5 of the Final Office Action", the Examiner states that:

"...claim 25 recites a method for access to a database of available employment opportunities, however, the body of the claims makes no mention of any filtering access to a database. Therefore, claim 25 fails to provide *a useful, concrete and tangible result.*"

Pending independent claim 25 has been amended to be limited to "...determine ones of said employment opportunities stored in said database suiting said

personality of said employment seeker; identifying to said employment seeker a list of said employment opportunities...”

It is now believed that the body of claim 25 provides a useful, concrete and tangible result and is thus directed to patentable subject matter.

**B. Rejection of dependent claims 3-17, 21, 23, and 24 under 35 U.S.C. 101 as being directed to non-statutory subject matter**

3. Dependent Claims 3-17, 21, 23 and 24

The Examiner has rejected dependent claims 3-17, 21, 23 and 24 for the same reasons as independent claims 1 and 22.

Pending independent claims 1 and 22 have been amended to be limited to a “computer-implemented method”. For the reasons noted in relation to the rejection of independent claims 1 and 22, it is now believed that dependent claims 3-17, 21, 23 and 24 are directed to patentable subject matter.

**C. Rejection of independent claims 1, 18, and 19 under 35 U.S.C. 103(a) in view of McGovern and Wagner.**

4. Independent Claim 1

In order to reject a claim under 35 U.S.C. 103, the Examiner must establish a) that all claim limitations are found in the references and b) motivation in the

references or in the art to modify the references or to combine the references to arrive at the claimed invention.

On page 6 of the Final Office Action, the Examiner adopts the following assertions set forth previously on page 5 of Office Action mailed November 10, 2003:

“McGovern et al discloses all of the limitations above, but does not explicitly disclose data measuring a plurality of defined personality traits for suitable candidates for that employment position, a list identifying those of said employment positions for which defined personality traits, as reflected by said employment position data. Wagner, in the same field of endeavor, discloses the idea of obtaining job position data and personality traits information from an employee and matching said position data. (See entire page 1 of Wagner). It would have been obvious to a person of ordinary skill in the art to modify the disclosures of McGovern et al to incorporate the teachings of Wagner. A person having ordinary skill in the art would have been motivated to use such a modification in order to ensure a successful match of employee with employment.”

The Applicant respectfully disagrees. As previously set out in the Applicant's Office Action Responses, Wagner discloses conventional personality profiling as applied by a single employer, done after a candidate's education and work experience has been scrutinized. The references do not provide any motivation to modify them to arrive at the present invention. The Wagner reference must be read as a whole, and it is within the context of a broader “Quality Vision” of a single company, (see paragraph 13 of Wagner). The present invention is directed towards the matching of applicants with multiple employers and not resource allocation of known individuals within a single organization.

Wagner teaches away from the use of personality profiling in an anonymous, applicant driven method, since it discloses a single company with strict control over its hiring methods requiring an applicant to attend multiple meetings (see paragraphs 4 and 11 of Wagner). In the present invention, a prospective employer may never be aware of a candidate who has a personality profile that does not match the defined personality traits for an available employment position. This is possible because personality assessments at utilized at the initial step of the hiring process, before any meetings or interviews have taken place and the applicant is still anonymous.

Neither McGovern nor Wagner discloses the providing of a list of actual job positions. The Examiner states that Wagner implies that a list of positions is provided to the applicant in paragraph 10 of Wagner (“if you’re not right for the one position, you might be perfectly targeted to another”). Even if this were to be accepted, within the controlled hiring methods of a single company this statement also implies that such a list would not include opportunities available at other competing companies and that there would be no motivation to do so. The present invention provides information to the job applicants, in the form of a list of available jobs at multiple employers.

As such, the Examiner has failed to show that the applied prior art references have provided any proper motivation to combine or modify the references to arrive at the claimed invention in claim 1. The Examiner has thus failed to establish a *prima facie* case of obviousness. Reversal of the Examiner’s rejection of claim 1 under 35 U.S.C. 103 is therefore requested.

#### 5. Independent Claims 18 and 19

The Examiner has rejected claims 18 and 19 for the same reason as claim 1.

For the reasons noted in relation to the rejection of claim 1, the Examiner has failed to show that the applied prior art references have provided any proper motivation to combine or modify the references to arrive at the claimed invention in claims 18 and 19. The Examiner has thus failed to establish a *prima facie* case of obviousness. Reversal of the Examiner's rejection of claims 18 and 19 under 35 U.S.C. 103 is therefore requested.

**D. Rejection of dependent claims 3-5, 16, 17, and 20 under 35 U.S.C. 103(a) in view of McGovern and Wagner.**

6. Dependent Claim 3

Claim 3 depends from independent claim 1 and defines the additional claim step of providing the candidate with a candidate questionnaire in order to determine the individual candidate data and thereby assess the personality profile.

On page 6 of the Final Office Action, the Examiner adopts the following assertions that were set forth on page 6 of a previous Office Action mailed November 10, 2003:

“McGovern et al does not explicitly disclose providing the candidate with a candidate questionnaire in order to determine the individual candidate data and thereby assessing a personality profile. Wagner discloses an employee selection process involving questioning a job applicant for obtaining personality traits data. See page 1 of Wagner. Wagner in the same field of endeavor, discloses wherein one of the personality traits of an employee is poise (Page 1 paragraph 4). Wagner further teaches providing a series of questions and interview to the job applicant. It would have been obvious to one of ordinary skill in the art to note that these

questions and interviews are similar to a questionnaire. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Wagner into McGovern et al for analysis purposes and in order to discover certain criteria from a job applicant”

The Applicant respectfully disagrees. As previously set out in the Applicant’s Office Action Responses, claim 3 further highlights the distinction between known methods of job matching and the present invention. Unlike Wagner, in which questions and interviews require an applicant to attend multiple meetings (see paragraphs 4 and 11 of Wagner), the present invention uses a candidate questionnaire to personality profile in a multiple employer, applicant driven method.

Candidate questions and interviews are generally administered to known job applicants by a single employer. As previously set out in the Applicant’s Office Action Responses, Wagner discloses conventional personality profiling as applied by a single employer, done after a candidate’s education and work experience has been scrutinized. Furthermore, this information is used for the purpose of resource allocation of these known individuals within a single organization.

Wagner teaches away from the use of a questionnaire to personality profile anonymous job applicants. In the present invention, a prospective employer may never be aware of a candidate who has a personality profile that does not match the defined personality traits for an available employment position. This is possible because personality assessments is utilized at the initial step of the hiring process, before any meetings or interviews have taken place and the applicant is still anonymous. Furthermore, the questionnaire in the present invention is one that leads to the provision of information to the job applicants, in the form of a list of available jobs at multiple employers.

Interviews are not normally conducted in this manner and the references do not provide any motivation to modify conventional interviews to arrive at a questionnaire as disclosed in the present invention.

As such, and as discussed in relation to claim 1, the Examiner has failed to show that the applied prior art references have provided any proper motivation to combine or modify the references to arrive at the claimed invention in claim 3. The Examiner has thus failed to establish a *prima facie* case of obviousness. Reversal of the Examiner's rejection of claim 3 under 35 U.S.C. 103 is therefore requested.

#### 7. Dependent Claims 4 and 5

The Examiner has rejected dependent claims 4 and 5 for the same reason as claim 3. For the reasons noted in relation to the rejection of claim 3, the Examiner has failed to show that the applied prior art references have provided any proper motivation to combine or modify the references to arrive at the claimed invention in claim 4. The Examiner has thus failed to establish a *prima facie* case of obviousness. Reversal of the Examiner's rejection of claims 4 and 5 under 35 U.S.C. 103 is therefore requested.

#### 8. Dependent Claims 16 and 17

Claims 16 and 17 both depend from independent claim 1.

The Examiner has rejected claim 16 for the same reason as claim 1. For the reasons noted in relation to the rejection of claim 1, the Examiner has failed to



show that the applied prior art references have provided any proper motivation to combine or modify the references to arrive at the claimed invention in claims 16 and 17. The Examiner has thus failed to establish a *prima facie* case of obviousness. Reversal of the Examiner's rejection of claims 16 and 17 under 35 U.S.C. 103 is therefore requested.

9. Dependent Claim 20

Claim 20 depends from independent claim 19.

The Examiner has rejected claim 20 for the same reason as claim 19. For the reasons noted in relation to the rejection of claim 19, the Examiner has failed to show that the applied prior art references have provided any proper motivation to combine or modify the references to arrive at the claimed invention in claim 20. The Examiner has thus failed to establish a *prima facie* case of obviousness. Reversal of the Examiner's rejection of claim 20 under 35 U.S.C. 103 is therefore requested.

**E. Rejection of independent claims 22, 25, and 26 under 35 U.S.C. 103(a) in view of Kurzuiz and Wagner and Jane.**

10. Independent Claim 22

In order to reject a claim under 35 U.S.C. 103, the Examiner must establish a) that all claim limitations are found in the references and b) motivation in the references or in the art to modify the references or to combine the references to arrive at the claimed invention.

On page 6 of the Final Office Action, the Examiner adopts the following assertions that were set forth on page 12 of a previous Office Action mailed November 10, 2003:

“Kurzius et al teaches all of the limitations above, but fails to teach a personality profile reflective of a personality trait of the candidate. Wagner, in the same field of endeavor, discloses personality profile reflective of personality trait of job seekers and matching said personality trait (See page 1). It would have been obvious to a person of ordinary skill in the art to modify the disclosures of McGovern et al to incorporate the teachings of Wagner. A person having ordinary skill in the art would have been motivated to use such a modification in order to ensure a successful match of employee with employment.”

The Applicant believes that the third sentence of the above quoted paragraph contains an error and that the Examiner intended to refer to “...Kurzius et al...” instead of “...McGovern et al...”

On page 13 of the previous Office Action mailed November 10, 2003, the Examiner states:

“Alternatively, Jane discloses the idea of assessing a candidate personality profile based on interviews given to the candidate and response obtained from the candidate. (See pages 2-7). It would have been obvious to a person of ordinary skill in the art at the time of applicant’s invention to modify the disclosure of Kurzius et al with Wagner or Jane to include the personality assessment data therein. A person having ordinary skill in the art would have been motivated to use such a modification in order to determine the quantitative skills of all candidates seeking a particular position.”

The Applicant respectfully disagrees. As previously set out in the Applicant's Office Action Responses, Wagner discloses conventional personality profiling as applied by a single employer, done after a candidate's education and work experience has been scrutinized. Jane discloses the use of personality profiling, but does not suggest doing so for the purpose of providing a list of actual job positions available to the applicant.

The references do not provide any motivation to modify them to arrive at the present invention. The Wagner reference must be read as a whole, and it is within the context of a broader "Quality Vision" of a single company, (see paragraph 13 of Wagner). The present invention is directed towards the matching of applicants with multiple employers and not resource allocation of known individuals within a single organization.

Wagner teaches away from the use of personality profiling in an anonymous, applicant driven method, since it discloses a single company with strict control over its hiring methods requiring an applicant to attend multiple meetings (see paragraphs 4 and 11 of Wagner). Jane also teaches away from the present invention in a similar manner, as it discloses general interview guidelines for conduction employment interviews.

In the present invention, a prospective employer may never be aware of a candidate who has a personality profile that does not match the defined personality traits for an available employment position. This is possible because personality assessments at utilized at the initial step of the hiring process, before any meetings or interviews have taken place and the applicant is still anonymous. The present invention also provides information to the job applicants, in the form of a list of available jobs at multiple employers.

None of the references provides any motivation for making information about alternative employment opportunities at other competing companies available to an anonymous job candidate.

As such, the Examiner has failed to show that the applied prior art references have provided any proper motivation to combine or modify the references to arrive at the claimed invention in claim 22. The Examiner has thus failed to establish a *prima facie* case of obviousness. Reversal of the Examiner's rejection of claim 22 under 35 U.S.C. 103 is therefore requested.

#### 11. Independent Claim 25

The Examiner has rejected claim 25 for the same reason as claim 22.

Additionally, on page 8 of the Final Office Action the Examiner states the following:

“Further, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., ... personality profiling *in order to filter* available employment positions...) are not recited in the rejected claim(s).”

The Applicant respectfully disagrees. Claim 25 starts with the following sentence: “A method of filtering access to a database of available employment opportunities...” The whole of claim 25 is directed towards the key feature of filtering available employment positions.

Additionally, the body of pending independent claim 25 has been amended to be limited to “...determine ones of said employment opportunities stored in said

database suiting said personality of said employment seeker; identifying to said employment seeker a list of said employment opportunities...” The Applicant believes that claim 25 now clearly shows the filtering feature of the present invention.

As previously set out in the Applicant’s Office Action Responses, the use of personality profiling to filter available employment positions for multiple employers as claimed in Claim 25 is a radical departure from known practices in the field of job matching and recruiting.

Thus, the examiner has failed to establish that all claim limitations are found in the references. For the reasons noted in relation to the rejection of claim 22, the Examiner has also failed to show that the applied prior art references have provided any proper motivation to combine or modify the references to arrive at the claimed invention in claim 25. The Examiner has thus failed to establish a *prima facie* case of obviousness. Reversal of the Examiner’s rejection of claim 25 under 35 U.S.C. 103 is therefore requested.

#### 12. Independent Claim 26

The Examiner has rejected claim 26 for the same reason as claim 22. For the reasons noted in relation to the rejection of claim 22, the Examiner has failed to show that the applied prior art references have provided any proper motivation to combine or modify the references to arrive at the claimed invention in claim 26. The Examiner has thus failed to establish a *prima facie* case of obviousness. Reversal of the Examiner’s rejection of claim 26 under 35 U.S.C. 103 is therefore requested.

**F. Rejection of dependent claims 23, 24, and 27 under 35 U.S.C. 103(a) in view of Kurzius and Wagner and Jane.**

13. Dependent Claims 23, 24 and 27

Claims 23, 24 and 27 depend from independent claim 22.

The Examiner has rejected claim 23 for the same reason as claim 22. For the reasons noted in relation to the rejection of claim 22, the Examiner has failed to show that the applied prior art references have provided any proper motivation to combine or modify the references to arrive at the claimed invention in claims 23, 24 and 27. The Examiner has thus failed to establish a *prima facie* case of obviousness. Reversal of the Examiner's rejection of claims 23, 24, and 27 under 35 U.S.C. 103 is therefore requested.

**G. Rejection of dependent claims 6-9 under 35 U.S.C. 103(a) in view McGovern, Wagner, and Puram.**

14. Dependent Claim 6

Claim 6 depends from independent claim 1.

On page 10 of the Office Action mailed November 10, 2003, the Examiner states the following:

“As per claims 6,7,8 and 9, the combination of McGovern et al and Wagner does not explicitly disclose numerical values and ranges indicative of personality traits. Puram et al on the other hand, in the same

field of endeavor, discloses a matching system comprising data having numerical values and ranges for calculating a candidate profile score for best-fit matches (col. 8, lines 47-60). It would have been obvious to a person of ordinary skill in the art to modify the disclosures of McGovern et al and Wagner to include the teachings of Puram. A person having ordinary skill in the art would have been motivated to use such a modification in order to match candidates to positions, thus enhancing the selection criteria into a make perfect match”

The Applicant respectfully disagrees. As previously set out in the Applicant’s Office Action Responses, claim 6 further highlights the distinction between known methods of job matching and the present invention. In the present invention, a prospective employer may never be aware of a candidate who has a personality profile that does not match the defined personality traits for an available employment position. The present invention is directed towards the matching of applicants with multiple employers and not resource allocation of known individuals within a single organization.

The references do not provide any motivation to modify them to arrive at the present invention. For the reasons noted in relation to the rejection of claim 1, Wagner teaches away from the use of personality profiling in a method involving multiple employers and suitable for an applicant. A careful reading of the Puram reference reveals that it teaches away from using numerical values to personality profile in an anonymous manner:

“Alternatively, the system administrator may choose to have the list returned to the system administrator rather than to the employer, so that the administrator can contact the candidates to confirm their availability before passing their names on to the employer.” (col. 8, lines 42-46).

Thus, for the reasons noted above and also in relation to the rejection of claim 1, the Examiner has also failed to show that the applied prior art references have provided any proper motivation to combine or modify the references to arrive at the claimed invention in claim 6. The Examiner has thus failed to establish a *prima facie* case of obviousness. Reversal of the Examiner's rejection of claim 6 under 35 U.S.C. 103 is therefore requested.

15. Dependent Claims 7-9

The Examiner has rejected claims 7-9 for the same reason as claim 6. For the reasons noted in relation to the rejection of claim 6, the Examiner has failed to show that the applied prior art references have provided any proper motivation to combine or modify the references to arrive at the claimed invention in claims 7-9. The Examiner has thus failed to establish a *prima facie* case of obviousness. Reversal of the Examiner's rejection of claim 7 under 35 U.S.C. 103 is therefore requested.

**H. Rejection of dependent claims 10-12 under 35 U.S.C. 103(a) in view of McGovern, Wagner, Puram, and US Patent No. 6,275,012 to Haq et al. (hereinafter "Haq").**

16. Dependent Claim 10

Claim 10 depends from dependent claim 9.

On page 10 of the Office Action mailed November 10, 2003, the Examiner states the following:



“As per claims 10-12, the combination of McGovern et al, Wagner, and Puram et al is discussed above. However, the combination does not explicitly disclose the use of calculating a metric comparing each trait of said candidate. However, Haq et al discloses the idea of a calculated metric for calculating an employee skill (see figure 3 and column 8, lines 47-60). It would have been obvious to a person of ordinary skill in the art to modify the teachings of McGovern et al, Wagner, and Puram et al to include the Haq et al’s calculated metric. A person having ordinary skill in the art would have been motivated to use such a modification in order to optimize the assignment of employees to positions thus, further enhancing the selection criteria”

The Applicant respectfully disagrees. Claim 10 further highlights the distinction between known methods of job matching and the present invention. In the present invention, a prospective employer may never be aware of a candidate who has a personality profile that does not match the defined personality traits for an available employment position. The present invention is directed towards the matching of applicants with multiple employers and not resource allocation of known individuals within a single organization.

The references do not provide any motivation to modify them to arrive at the present invention. For the reasons noted in relation to the rejection of claim 1, Wagner teaches away from the use of personality profiling in an applicant driven method. For the reasons noted in relation to the rejection of claim 6, Puram teaches away from using numerical values to personality profile in an anonymous manner. Haq et al. also teaches away from the calculation of metrics for creating anonymous personality profiles:

“The ISDRM Query Software outputs the names of all the employees in order of their SSIsAs, along with their RSIsAs, SIsAs, and deployment schedules.” (col. 12, lines 46-49).

Thus, for the reasons noted above and also in relation to the rejection of claims 1 and 6, the Examiner has also failed to show that the applied prior art references have provided any proper motivation to combine or modify the references to arrive at the claimed invention in claim 10. The Examiner has thus failed to establish a *prima facie* case of obviousness. Reversal of the Examiner’s rejection of claim 10 under 35 U.S.C. 103 is therefore requested.

#### 17. Dependent Claims 11 and 12

Claims 11 and 12 depend from dependent claim 10.

The Examiner has rejected claims 11 and 12 for the same reasons as claim 10. For the reasons noted in relation to the rejection of claim 10, the Examiner has failed to show that the applied prior art references have provided any proper motivation to combine or modify the references to arrive at the claimed invention in claims 11 and 12. The Examiner has thus failed to establish a *prima facie* case of obviousness. Even if a *prima facie* case of obviousness is established, there is sufficient evidence of commercial success, long-felt need, and unexpected results to rebut the *prima facie* case. Reversal of the Examiner’s rejection of claims 11 and 12 under 35 U.S.C. 103 is therefore requested.

**I. Rejection of dependent claims 13-15 under 35 U.S.C. 103(a) in view of McGovern, Wagner, and US Patent No. 6,571,334 to Feldbau et al. (hereinafter “Feldbau”).**

18. Dependent Claim 13

Claim 13 depends from independent claim 1.

On page 11 of the Office Action mailed November 10, 2003, the Examiner states the following:

“Feldbau et al discloses the idea of using an authenticator for authenticating a document for secure transmission (col. 9 line 50 through col. 10 line 19). Incorporating the teachings of Feldbau et al into the disclosures of McGovern et al and Wagner would have been obvious to a person of ordinary skill in the art with the motivation to securing the transmission of the listing/document, thereby ensuring the document reaches its recipient without being tampered with”

The Applicant respectfully disagrees. The authentication mechanism utilized in the present invention is such that a printable certificate is created that may be presented to the employer of a particular available job. This authenticates that the present invention was used by the anonymous individual and that the anonymous individual bearing the certificate has a personality suited for an available job. Feldbau et al. teaches a method of providing a sender of a document with evidence proving “that specific information has been sent at a specific time to that specific receiving party” (col. 1, lines 40-42). Feldbau et al. discloses an authentication system that is directed to the authentication of a sent document and does not show the authentication feature of the present invention.

Thus, the examiner has failed to establish that all claim limitations are found in the references. For the reasons noted in relation to the rejection of claim 1, the Examiner has also failed to show that the applied prior art references have

provided any proper motivation to combine or modify the references to arrive at the claimed invention in claim 13. The Examiner has thus failed to establish a *prima facie* case of obviousness. Reversal of the Examiner's rejection of claim 13 under 35 U.S.C. 103 is therefore requested.

19. Dependent Claims 14 and 15

Claims 14 and 15 depend from dependent claim 13.

The Examiner has rejected claims 14 and 15 for the same reasons as claim 13. For the reasons noted in relation to the rejection of claim 13, the Examiner has failed to establish that all claim limitations are found in the references and that the applied prior art references have provided any proper motivation to combine or modify the references to arrive at the claimed invention in claim 14. The Examiner has thus failed to establish a *prima facie* case of obviousness. Reversal of the Examiner's rejection of claim 14 under 35 U.S.C. 103 is therefore requested.

**J. Rejection of dependent claim 21 under 35 U.S.C. 103(a) in view of McGovern, Wagner, and Jane.**

20. Dependent Claim 21

Claim 21 depends from independent claim 3.

On page 9 of the Office Action mailed November 10, 2003, the Examiner states the following:

“As per claim 21, the combination of McGovern et al and Wagner doesn’t explicitly disclose psychometric test to assess said personality profile. Jane on the other hand, discloses the idea of using a psychometric test to assess a candidate personality profile. Note pages 2-7. It would have been obvious to a person of ordinary skill in the art to modify the disclosures of McGovern et al and Wagner to include the psychometric test assessment of Jane in order to determine quantitative skills of the candidate.”

The Applicant respectfully disagrees. As previously set out in the Applicant’s Office Action Responses, Jane discloses the use of psychometric personality profiling, but does not suggest doing so for the purpose of providing a list of actual job positions available to the applicant. Similar to Wagner, as discussed in reasons noted in relation to the rejection of claim 3, Jane discloses the use of personal interviews with employers and teaches away from the use of personality profiling in an anonymous, applicant driven method.

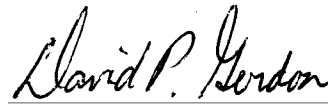
The references do not provide any motivation to modify conventional interviews to use a psychometric personality evaluation technique to arrive at the present invention.

As such, the Examiner has failed to show that the applied prior art references have provided any proper motivation to combine or modify the references to arrive at the claimed invention in claim 21. The Examiner has thus failed to establish a *prima facie* case of obviousness. If obviousness is established, there is sufficient evidence of commercial success, long-felt need, and unexpected results to rebut the *prima facie*. Reversal of the Examiner’s rejection of claim 21 under 35 U.S.C. 103 is therefore requested.

**Summary**

For the foregoing reasons, it is submitted that the Examiner's rejection of claims 1-27 is erroneous, and reversal of his rejections is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink that reads "David P. Gordon". The signature is written in a cursive style with a horizontal line underneath.

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**Appendix – Claims Currently on File**

Claim 1 (previously presented) A computer implemented method of matching an employment candidate to specific employment positions from multiple employers, comprising:

- f. for each of a plurality of available employment positions, receiving employment position data measuring a plurality of defined personality traits for suitable candidates for that employment position;
- g. storing said received employment position data;
- h. receiving individual candidate data, representative of a personality profile for said employment candidate;
- i. comparing said individual candidate data with said employment position data to produce a list of potential employment positions for said candidate, from said employment positions, said list identifying those of said employment positions for which defined personality traits, as reflected by said employment position data, match said individual candidate data;
- j. providing said list to said candidate.

Claim 2 (cancelled):

Claim 3 (previously presented): The method of claim 1 further comprising, providing said candidate with a candidate questionnaire in order to determine said individual candidate data and thereby assess said personality profile.

Claim 4 (previously presented): The method of claim 3, further comprising providing an employee questionnaire to successful employees, filling each of said specific employment positions, to determine said employment position data thereby assessing said plurality of defined personality traits for said each of said plurality of employment positions.

Claim 5 (original): The method of claim 4, wherein said candidate questionnaire and said employee questionnaire are identical.

Claim 6 (original): The method of claim 1, wherein said received employment position data comprises a plurality of numerical ranges, each range indicative of a range of values of a single personality trait of a suitable candidate for one of said employment positions.

Claim 7 (previously presented): The method of claim 6, wherein said received candidate data comprises a plurality of numerical values, each numerical value indicative of a single personality trait for said candidate.

Claim 8 (previously presented): The method of claim 7, wherein each of said plurality of ranges for each employment position, corresponds to one of said plurality of numerical values for said candidate.

Claim 9 (original): The method of claim 8, wherein said comparing comprises determining which of said numerical values for said candidate falls within a corresponding range for each employment position.

Claim 10 (original): The method of claim 9, wherein said comparing includes calculating a metric comparing each trait of said candidate, with a corresponding trait for each of said employment positions.

Claim 11 (original): The method of claim 10, wherein each metric is calculated by calculating a difference between a value for said trait of said candidate, and an average of a corresponding range for an employment position.



Claim 12 (original): The method of claim 11, wherein said comparing further comprising summing all of said metrics to arrive at a score indicative of said candidate's suitability for an employment position.

Claim 13 (original): The method of claim 1, further comprising providing said candidate with an authenticator, authenticating that said candidate has obtained said list.

Claim 14 (original): The method of claim 13, wherein said authenticator comprises a document.

Claim 15 (original): The method of claim 13, wherein said list includes identifiers of each of said employers.

Claim 16 (original): The method of claim 1, further comprising:

- k. receiving employment interest data measuring a plurality of defined interests for suitable candidates for each employment position from said employers;
- l. storing said received employment interest data;
- m. receiving individual candidate interest data, representative of interests for an individual candidate;

and wherein d. further comprises comparing said individual candidate interest data with said employment interest data to produce said list.

Claim 17 (previously presented) The method of claim 1, wherein at least one of said defined plurality of defined personality traits are chosen from the list of independence; competitiveness; assertiveness; conscientiousness; convention; organization; extroversion; group orientation; outgoing; stability; poise; relaxation; and social desirability.

Claim 18 (previously presented): A computer readable medium, storing computer software that when loaded into a computing device, adapts said computing device to:

- i. for each of a plurality of available employment positions, receive employment position data measuring a plurality of defined personality traits for suitable candidates for each of a plurality of employment positions from a plurality of employers;
- ii. store said received employment position data at said computing device;
- iii. receive individual candidate data, representative of a personality profile for said candidate;
- iv. compare said individual candidate data with said employment position data to produce a list of potential employment positions for said individual candidate from said employment positions, said list identifying those of said employment positions for which defined personality traits, as reflected by said employment position data, match said individual candidate data;
- v. provide said list to said individual candidate.

Claim 19 (previously presented) A computing device for interconnection with a computer network, said computing device comprising:

- a. a processor;
- b. computer memory in communication with said processor;

said computer memory storing processor readable instructions adapting said computing device to:

- i. for each of a plurality of available employment positions, receive employment position data measuring a plurality of defined personality traits for suitable candidates for each of a plurality of employment positions from a plurality of employers;

- ii. store said received employment position data at said computing device;
- iii. receive individual candidate data, representative of a personality profile for said candidate;
- iv. compare said individual candidate data with said employment position data to produce a list of potential employment positions for said individual candidate from said employment positions, said list identifying those of said employment positions for which defined personality traits, as reflected by said employment position data, match said individual candidate data;
- v. provide said list to said individual candidate.

Claim 20 (previously presented): The computing device of claim 19, further comprising:

- c. a network interface, in communication with said processor and for interconnection with a computer network to receive said employment position data and said individual candidate data from said computer network.

Claim 21 (previously presented): The method of claim 3, wherein said questionnaire comprises a psychometric test to assess said personality profile.

Claim 22 (previously presented): A computer implemented method of matching employment seekers to available employment openings of a plurality of employers using a computing device, comprising:

- for each of said employment openings storing aggregate personality profiles, reflective of desired personality traits for that employment opening;

for each of said employment openings storing identifying information for that employment opening;  
administering a questionnaire to an employment seeker;  
assessing a personality profile of said employment seeker based on said questionnaire;  
comparing said personality profile of said employment seeker to said stored aggregate personality profiles, to determine ones of said employment openings suiting said personality profile of said employment seeker;  
identifying to said employment seeker, a list of said identifying information of said employment openings suiting said personality profile of said employment seeker based on said comparing.

Claim 23 (previously presented): The method of claim 22, wherein said questionnaire comprises a psychometric test to assess said personality profile.

Claim 24 (previously presented): The method of claim 22, wherein said aggregate personality profiles for each of said employment openings is assessed using said questionnaire.

Claim 25 (previously presented): A computer implemented method of filtering access to a database of available employment opportunities, accessible by way of a data network, said method comprising:

for each of said employment opportunities, storing an aggregate personality profile, reflective of desired personality traits for that employment opportunity, and associated information about that employment opportunity;  
providing a questionnaire to an employment seeker;  
receiving responses to said questionnaire;

assessing a personality profile of said employment seeker based on said responses;  
comparing said personality profile of said employment seeker to said stored aggregate personality profiles, to determine ones of said employment opportunities stored in said database suiting said personality of said employment seeker;  
identifying to said employment seeker a list of said employment opportunities suiting said personality profile of said employment seeker, and said associated information of said employment opportunities suiting said personality profile of said employment seeker, based on said comparing.

Claim 26 (previously presented): A computer implemented method of operating an on-line database service matching employment opportunities of various employers to employment seekers, said method comprising:

for each of said employment opportunities, receiving from one of said various employers, an aggregate personality profile, reflective of desired personality traits for that employment opportunity, and associated information about that employment opportunity;  
storing said aggregate personality profile;  
providing a questionnaire to an employment seeker;  
receiving responses to said questionnaire;  
assessing a personality profile of said employment seeker based on said responses;  
comparing said personality profile of said employment seeker to said stored aggregate personality profiles, to determine ones of said employment openings suiting said personality profile of said employment seeker;  
identifying to said employment seeker, a list of said employment opportunities suiting said personality profile of said employment seeker,

and said associated information of said employment opportunities suiting said personality profile of said employment seeker, based on said comparing.

Claim 27 (previously presented): A computer readable medium, storing computer software that when loaded into a computing device, adapts said computing device to perform the method of claim 22.

**Appendix – Evidence**

No evidence has been submitted under 37 CFR 1.130, 1.131 or 1.132 or entered by the Applicant or Examiner and relied upon by the Applicant in this Appeal.

**Appendix – Related Proceedings**

There are no related proceedings identified herein.